

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

ELIJAH LEE MILLER,

Plaintiff,

v.

MULE CREEK STATE PRISON, et al.,

Defendants.

No. 2:21-cv-2104 WBS DB P

FINDINGS AND RECOMMENDATIONS

Plaintiff, a state prisoner, filed this pro se civil rights action pursuant to 42 U.S.C. § 1983. On April 4, 2022, the court reviewed an affidavit in support of plaintiff's motion to proceed in forma pauperis and found plaintiff's prison trust account statement reflected he had \$1,755.42 in available funds on November 18, 2021, an amount sufficient to pre-pay the filing fees for this action. (ECF No. 8.) The court determined plaintiff had not made an adequate showing of indigency under 28 U.S.C. § 1915(a) to support his application to proceed in forma pauperis. See Olivares v. Marshall, 59 F.3d 109, 112 (9th Cir. 1995); Alexander v. Carson Adult High Sch., 9 F.3d 1448, 1449 (9th Cir. 1993).

Pursuant to the court's April 4, 2022 order, plaintiff was granted twenty (20) days to submit the appropriate filing fee or inform the court why he could no longer pay the fee. Plaintiff was cautioned that failure to comply with the order would result in a recommendation that the

1 motion to proceed in forma pauperis be denied and the present action be dismissed without
2 prejudice.

3 Plaintiff has not paid the filing fee or otherwise responded to the court's order.

4 Accordingly, for the foregoing reasons, IT IS RECOMMENDED:

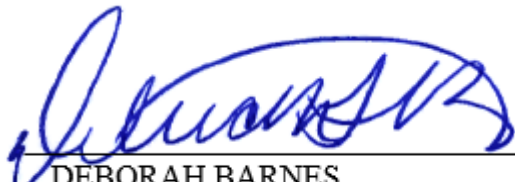
5 1. Plaintiff's application to proceed in forma pauperis (ECF No. 2) be denied and this
6 action be dismissed without prejudice to refiling upon pre-payment of the filing fee or an
7 adequate showing of indigency under 28 U.S.C. § 1915(a).

8 2. The Clerk of the Court be directed to close this case.

9 These findings and recommendations are submitted to the United States District Judge
10 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within twenty (20) days
11 after being served with these findings and recommendations, plaintiff may file written objections
12 with the court and serve a copy on all parties. Such a document should be captioned
13 "Objections to Magistrate Judge's Findings and Recommendations." Plaintiff is advised that
14 failure to file objections within the specified time may waive the right to appeal the District
15 Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

16 DATED: May 4, 2022

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DEBORAH BARNES
UNITED STATES MAGISTRATE JUDGE